

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ZOE T.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

Case No. 3:19-cv-05268

ORDER AFFIRMING  
DEFENDANT'S DECISION TO  
DENY BENEFITS

Plaintiff has brought this matter for judicial review of Defendant's denial of supplemental security income ("SSI") benefits.

The parties have consented to have this matter heard by the undersigned Magistrate Judge. 28 U.S.C. § 636(c); Federal Rule of Civil Procedure 73; Local Rule MJR 13. For the reasons set forth below, the Court affirms Defendant's decision to deny benefits.

I. ISSUES FOR REVIEW

1. Did the ALJ properly evaluate Plaintiff's symptom testimony?
2. Did the ALJ err in evaluating an opinion from Plaintiff's therapist?

II. BACKGROUND

On January 11, 2016, Plaintiff filed an application for SSI, alleging a disability onset date of August 27, 2012. AR 15, 151-57. Plaintiff subsequently amended the alleged onset date to January 11, 2016. AR 15, 40. Plaintiff's application was denied

1 upon initial administrative review and on reconsideration. AR 15, 85-88, 92-94. A  
2 hearing was held before Administrative Law Judge (“ALJ”) S. Andrew Grace on January  
3 9, 2018. AR 37-55. On May 11, 2018, the ALJ issued a written decision finding that  
4 Plaintiff was not disabled. AR 12-27. The Social Security Appeals Council denied  
5 Plaintiff’s request for review on February 13, 2019. AR 1-6.

6 On April 16, 2019, Plaintiff filed a complaint in this Court seeking judicial review  
7 of the ALJ’s written decision. Dkt. 4.

### 8 III. STANDARD OF REVIEW

9 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s  
10 denial of social security benefits if the ALJ’s findings are based on legal error or not  
11 supported by substantial evidence in the record as a whole. *Revels v. Berryhill*, 874  
12 F.3d 648, 654 (9th Cir. 2017). Substantial evidence is “such relevant evidence as a  
13 reasonable mind might accept as adequate to support a conclusion.” *Biestek v.*  
14 *Berryhill*, 139 S. Ct. 1148, 1154 (2019) (internal citations omitted).

### 15 IV. DISCUSSION

16 In this case, the ALJ found that Plaintiff had the severe, medically determinable  
17 impairments of major depressive disorder, panic disorder, gender dysphoria, post-  
18 traumatic stress disorder (“PTSD”), diabetes mellitus, and obesity. AR 17. The ALJ also  
19 found that Plaintiff had the non-severe impairments of hyperlipidemia, acute leg  
20 laceration, and a history of alcohol abuse, and the non-medically determinable  
21 impairment of attention deficit hyperactivity disorder (“ADHD”). AR 17-18.

22 Based on the limitations stemming from these impairments, the ALJ found that  
23 Plaintiff could perform a reduced range of medium work. AR 20. Relying on vocational  
24 expert (“VE”) testimony, the ALJ found that while Plaintiff could not perform past work,

1 they could perform other medium, unskilled jobs at step five of the sequential  
2 evaluation; therefore, the ALJ determined at step five that Plaintiff was not disabled. AR  
3 25-26, 52-53.

4 A. Whether the ALJ erred in evaluating Plaintiff's testimony

5 Plaintiff contends that the ALJ did not provide clear and convincing reasons for  
6 discounting Plaintiff's symptom testimony concerning mental health impairments. Dkt.  
7 10, pp. 2-9. The ALJ provided a clear and convincing reason for discounting Plaintiff's  
8 allegations concerning anxiety symptoms. *See Valentine v. Astrue*, 574 F.3d 685, 693  
9 (9th Cir. 2009) (the ALJ properly discounted claimant's credibility because his daily  
10 activities suggested his claims about the severity of his limitations were exaggerated);  
11 *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002) (in making a credibility  
12 determination, an ALJ may consider inconsistencies between a claimant's testimony  
13 and conduct).

14 At step two of the sequential evaluation, the ALJ found that Plaintiff's ADHD, the  
15 primary cause of attention and concentration deficits, was not a medically determinable  
16 impairment, a finding that Plaintiff does not challenge. AR 17.

17 Even if the ALJ erred at step two or in evaluating Plaintiff's testimony with respect  
18 to ADHD, any error would be harmless, since there is nothing to indicate that Plaintiff's  
19 ADHD would impose functional limitations beyond those already contained in the  
20 residual functional capacity, which includes restrictions related to Plaintiff's  
21 concentration deficits. AR 20; *see Molina v. Astrue*, 674 F.3d 1104, 1122 (9th Cir. 2012)  
22 (noting that harmless error principles apply in the Social Security context).

1 In weighing a Plaintiff's testimony, an ALJ must use a two-step process. *Trevizo*  
2 *v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). First, the ALJ must determine whether  
3 there is objective medical evidence of an underlying impairment that could reasonably  
4 be expected to produce some degree of the alleged symptoms. *Ghanim v. Colvin*, 763  
5 F.3d 1154, 1163 (9<sup>th</sup> Cir. 2014). If the first step is satisfied, and provided there is no  
6 evidence of malingering, the second step allows the ALJ to reject the claimant's  
7 testimony of the severity of symptoms if the ALJ can provide specific findings and clear  
8 and convincing reasons for rejecting the claimant's testimony. *Id.* See *Verduzco v.*  
9 *Apfel*, 188 F.3d 1087, 1090 (9th Cir. 1999).

10 Plaintiff testified about symptoms of anxiety and depression, difficulty getting out  
11 of bed and performing daily functions, and struggles with social interaction. AR 42-43,  
12 49-50. Plaintiff stated the anxiety is triggered by loud noises, especially sudden loud  
13 noises, and testified that sometimes just preparing for physician appointments  
14 intensifies the anxiety. AR 44, 47. Plaintiff testified about panic attacks about once a  
15 week, which can last for as long as two days – and during this time Plaintiff tends to  
16 “shut down entirely.” AR 50.

17 Plaintiff stated isolation is their response to these symptoms, and as a result,  
18 Plaintiff has few friends, does not go out in public or attend social gatherings, and no  
19 longer attends festivals or music concerts due to fear that people will get close  
20 physically and possibly collide with Plaintiff. AR 202-03.

21 Plaintiff testified to difficulties with concentration due to ADHD, and stated that  
22 attention will hold for between five and ten minutes, Plaintiff starts but does not typically  
23 finish tasks, and sometimes has difficulty following instructions. AR 202, 724-25.

1 In discounting Plaintiff's allegations, the ALJ reasoned that: (1) Plaintiff's self-  
2 reported activities of daily living are inconsistent with their alleged difficulties going out  
3 in public, being in crowds, and interacting with strangers; (2) Plaintiff's allegations  
4 concerning ability to maintain attention and concentrate are inconsistent with the  
5 medical record; (3) while Plaintiff experienced acute exacerbations of mental health  
6 symptoms, these were limited in duration, and improved with medication and  
7 counseling; and (4) Plaintiff's heavy caffeine consumption indicates anxiety symptoms  
8 were less severe than alleged. AR 21-23.

9 With respect to the ALJ's first reason, an ALJ may discredit a claimant's  
10 testimony when the claimant reports participation in everyday activities indicating  
11 capacities that are transferable to a work setting. *See Morgan v. Comm'r Soc. Sec.*  
12 *Admin.*, 169 F.3d 595, 600 (9th Cir.1999).

13 However, disability claimants should not be penalized for attempting to lead  
14 normal lives in the face of their limitations. *See Reddick v. Chater*, 157 F.3d 715, 722  
15 (9th Cir. 1998), citing *Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir.1987) (noting that a  
16 disability claimant need not "vegetate in a dark room" in order to be deemed eligible for  
17 benefits).

18 Here, the ALJ found that despite these allegations, Plaintiff was able to go the  
19 gym and attend yoga classes up to 5 days a week, for between 5 and 10 hours per  
20 week. AR 21, 333-34, 784. The ALJ also noted that Plaintiff has multiple friends and  
21 interacts with them regularly; Plaintiff also expressed interest in becoming a ride share  
22 driver, which would presumably require daily interaction with strangers. AR 21-22, 308,  
23 327, 545. The ALJ further noted that Plaintiff did not express any concerns about how  
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1 working as a ride share driver might impact their anxiety symptoms, and instead stated  
2 that the primary impediment to becoming a ride share driver was an inability to make a  
3 down payment on a car. AR 21-22, 308.

4 The ALJ found that Plaintiff's testimony about discomfort in crowds was  
5 inconsistent with attendance at large gatherings during the period at issue, including two  
6 music concerts. AR 22, 428, 642, 651, 654-55.

7 In citing the disparity between Plaintiff's self-reported activities of daily living and  
8 assertions of anxiety symptoms, the ALJ has provided a clear and convincing reason for  
9 discounting Plaintiff's testimony. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d  
10 1190,1196 (9th Cir. 2004) (An ALJ may discount a claimant's symptom allegations by  
11 pointing to "contradictions in the claimant's own testimony about [her] activities of daily  
12 living."); *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (noting that an ALJ may cite a  
13 claimant's activities of daily living as a reason for discounting symptom testimony when  
14 the claimant's participation in those activities contradict the claimant's other testimony).

15 Plaintiff's testimony about social isolation, as well as few friendships, an inability  
16 to be around loud noises, and an inability to participate in live festivals and concerts, is  
17 inconsistent with Plaintiff's statements elsewhere in the record. The record contains  
18 information showing that Plaintiff has multiple friends, goes to gym and yoga sessions  
19 on a regular basis, attends loud, crowded social gatherings such as music concerts and  
20 the state fair, and is interested in working as a ride share driver.

21 With respect to the Plaintiff's allegations concerning difficulties with attention and  
22 concentration stemming from ADHD, the ALJ found these allegations were inconsistent  
23 with Plaintiff's statements about maintaining attention and concentration for many hours  
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1 while watching television and playing Xbox, and taking prescribed medication, Ritalin,  
2 as needed when extra concentration would seem to be required. AR 22, 605, 725.

3 The ALJ provided additional reasons for discounting Plaintiff's testimony  
4 concerning Plaintiff's mental impairments, but the Court need not assess whether these  
5 reasons were proper, as any error would be harmless. *See Presley-Carrillo v. Berryhill*,  
6 692 Fed. Appx. 941, 944-45 (9th Cir. 2017) (citing *Carmickle v. Comm'r of Soc. Sec.*  
7 *Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008)) (although an ALJ erred on one reason he  
8 gave to discount a medical opinion, "this error was harmless because the ALJ gave a  
9 reason supported by the record" to discount the opinion).

10 B. Whether the ALJ erred in evaluating an opinion from Plaintiff's therapist

11 Plaintiff maintains that the ALJ erred in evaluating an opinion from Clinical  
12 Therapist Gina Hicks, MSW. Dkt. 10, pp. 9-10.

13 When evaluating opinions from non-acceptable medical sources such as a  
14 therapist, an ALJ may expressly disregard such lay testimony if the ALJ provides  
15 "reasons germane to each witness for doing so." *Turner v. Commissioner of Social*  
16 *Sec.*, 613 F.3d 1217, 1224 (9th Cir. 2010) (citing *Lewis v. Apfel*, 236 F.3d 503, 511 (9th  
17 Cir. 2001); 20 C.F.R. § 416.902).

18 On October 11, 2017, Ms. Hicks offered an opinion concerning Plaintiff's work-  
19 related mental limitations. AR 808-11. Ms. Hicks discussed Plaintiff's anxiety and  
20 concentration deficits, and opined that Plaintiff's mental impairments would cause an  
21 inability to perform a range of work-related mental activities on a regular, reliable,  
22 sustained schedule, or perform other activities without being off task more than 20  
23 percent of the workday. *Id.*

1 The ALJ assigned “partial weight” to Ms. Hicks’ opinion, reasoning that it was  
2 inconsistent with the longitudinal medical record, which indicates that Plaintiff’s mental  
3 health impairments improved with medication and counseling. AR 24.

4 In citing the inconsistency of Ms. Hicks’ opinion with the medical record, the  
5 ALJ’s reason is germane. *See Bayliss v. Barnhart*, 427 F.3d 1211, 1218 (9th Cir. 2005)  
6 (explaining that the ALJ may reject lay witness evidence that is inconsistent with the  
7 medical evidence); *see also Lewis v. Apfel*, 236 F.3d 503, 512 (9th Cir. 2001) (In  
8 rejecting lay testimony, the ALJ need not cite the specific record as long as “arguably  
9 germane reasons” for dismissing the testimony are noted, even though the ALJ does  
10 “not clearly link his determination to those reasons,” and substantial evidence supports  
11 the ALJ’s decision).

#### 12 CONCLUSION

13 Based on the foregoing discussion, the Court finds the ALJ’s decision finding  
14 Plaintiff to be not disabled is based on substantial evidence, and was not erroneous  
15 under the law. Defendant’s decision to deny benefits is therefore AFFIRMED.

16 Dated this 15th day of September, 2020.

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Theresa L. Fricke  
19 United States Magistrate Judge